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Managing the Early-Modern Periphery: Highland Policy and the Highland Judicial

Commission, c.1692-c.1705¹

It is a claim so frequently made as to border on cliché that the reign of William of Orange in Scotland was not a happy one. The king's lack of interest in and insensitivity towards domestic affairs made him heartily disliked, but his unpopularity was also rooted in a succession of unfortunate developments – principally the first Jacobite rising, a devastating famine and the disastrous attempt to establish a Scottish trading colony on the Isthmus of Panama – which were interpreted by some as divine retribution for the overthrow of James VII and II in favour of a Dutch usurper. This narrative of 'king William's ill years' is perpetuated by historians' conventional tendency to approach the 1690s through the prism of domestic hardship, often in search of the roots of the 1707 act of union; Jacobitism, dearth and Darien thus still bestride the historiography, and underpinning all of this is Patrick Riley's caustic judgement on Williamite Scotland as little more than the playground of a corrupt and selfish nobility.² More recently, some tentative movement has been made

¹ I would like to thank Dr Alastair Mann and the anonymous referees for their useful comments on earlier drafts of this article.

² Major published contributions include K. Cullen, *Famine in Scotland: The 'Ill Years' of the 1690s* (Edinburgh, 2010); B. Lenman, *The Jacobite Clans of the Great Glen 1650-1784* (Dalkeith, 2004); D. Watt, *The Price of Scotland: Darien, Union and the Wealth of Nations* (Edinburgh, 2007). Much pioneering early work on political history was published by Patrick Riley, especially P.W.J. Riley, *The Union of England and Scotland: A Study in Anglo-Scottish Politics of the Eighteenth Century* (Manchester, 1978) and P.W.J. Riley, *King William and the Scottish Politicians* (Edinburgh, 1979). More recent research includes M. Fry, *The Union: England, Scotland and the Treaty of 1707* (Edinburgh, 2007); A.I. Macinnes, *Union and Empire: The Making of the United Kingdom in 1707*

towards a rehabilitation of 1690s Scotland, principally by looking afresh at high politics and day-to-day government.³ Yet even this nascent revisionism leaves substantial gaps in our knowledge, and nowhere is the problem clearer than in our understanding of the Highlands. The first, largely Highland-driven Jacobite rising, led initially by John Graham, viscount Dundee, has attracted much comment (although not yet a dedicated scholarly study), as has the governmental response which culminated in the infamous massacre of Glencoe in February 1692.⁴ But the dramatic events of the ‘Highland War’ have tended to draw attention away from the rest of William’s reign, so that historians often seem content to assume that the Highlands simply dropped off the government’s agenda until the re-emergence of the Jacobite threat in the eighteenth century.⁵ In short, we know quite a lot about Highland policy prior to 1692, but very little about its development thereafter. This article seeks to address

(Cambridge, 2007); C. Whatley and D. Patrick, *The Scots and the Union* (Edinburgh, 2007), as well as various essays in K.M. Brown *et al* (eds.), *The History of the Scottish Parliament*, 3 vols (Edinburgh, 2004-2010). For recent work on post-revolution religious issues, see A. Raffe, *The Culture of Controversy: Religious Arguments in Scotland 1660-1714* (Woodbridge, 2012); A. Shukman, *Bishops and Covenanters: The Church in Scotland 1688-1691* (Edinburgh, 2012); J. Stephen, *Defending the Revolution: The Church of Scotland 1689-1716* (Aldershot, 2013).

³ D. Onnekink, ‘The Earl of Portland and Scotland (1689-1699): A re-evaluation of Williamite policy’, *Scottish Historical Review*, 85 (2006) 231-249, and L. Rayner, ‘The Tribulations of Everyday Government in Williamite Scotland’ in Sharon Adams and Julian Goodare (eds.), *Scotland in the Age of Two Revolutions* (Woodbridge, 2014), 193-210.

⁴ Easily the best treatment of these topics is P. Hopkins, *Glencoe and the End of the Highlands War* (Edinburgh, 1998), which also contains some very valuable discussion of late-seventeenth-century Highland policy more generally.

⁵ K.M. Brown, *Kingdom or Province? Scotland and the Regal Union, 1603-1715* (Basingstoke and London, 1992), 171-172

that gap, in particular through examination of the government's main post-war initiative, the Highland judicial commission of 1694. In doing so, the article hopes to shed fresh light on the strategic underpinnings of post-Revolution policy towards the Highlands within the broader context of centre-periphery interaction in seventeenth-century Europe. It begins by exploring the nature of the 'Highland problem' under William II, before going on to discuss the formation and rationale of the Highland commission, both on its own terms and in comparison with the earlier commission of 1682, which was its model. It then proceeds to analyse the business of the commission, asking how successful it was in curbing the perceived challenge of Highland lawlessness.

Governing peripheries in the seventeenth century

One of the more familiar explanatory paradigms through which historians have approached the seventeenth century is the rise of the 'state'. The classic model posits that the increasing frequency of warfare, especially after the outbreak of the Thirty Years War in 1618, placed unprecedented financial and material demands upon governments, exacerbated by technological changes rendering war inherently more expensive. Governments were thus forced in many cases to institute internal reforms with the aim of maximising their ability to marshal their state's material, financial and human resources for war. Although the detail of these reforms naturally varied from state to state, the resulting polities, sometimes referred to as 'fiscal-military' states or *Machtstaaten* ('power states'), were often characterised by a greater degree of fiscal exaction, expanded bureaucratic machinery, stronger coercive capacity and heightened concentration of power at the centre.⁶

⁶ The classic statement of this model is M. Roberts, 'The Military Revolution, 1560–1660' in his *Essays in Swedish History* (Minneapolis, 1967), 195–225, although Roberts' ideas echoed those

Within this discourse, the role of peripheral societies such as the Highlands is naturally delicate. In broad terms, historians have offered two distinct models of the peripheral experience. On the one hand, governments might seek to foster regional collaboration in their centralising agenda, usually offering pre-existing local luminaries lucrative or powerful government office. England, where the office-holding gentleman became the mainstay of day-to-day government, is probably the clearest example of this strategy in action, but a ‘collaborative’ approach has also been detected by historians working on Habsburg Spain (especially under Carlos II), Bourbon France, Hohenzollern Prussia and some parts of the Habsburg empire.⁷ In other cases, however, governments treated outlying regions with far less consideration, instead adopting an ‘imperialist’ attitude whereby the interests of the locality were deliberately subordinated to those of the core, allowing localities to be governed by centrally-appointed or centrally-approved personnel. This was, for example, the approach of Sweden towards its outlying regions, particularly in Germany and

earlier expressed by Otto Hintze. Perhaps the fullest theoretical statement is T. Ertman, *The Birth of Leviathan: Building States and Regimes in Medieval and Early Modern Europe* (Cambridge, 1997).

For the most sustained application of these ideas to Scotland, albeit in an earlier period, see L.A.M. Stewart, *Rethinking the Scottish Revolution: Covenanted Scotland, 1637-1651* (Oxford, 2016)

⁷ M.J. Braddick, *State Formation in Early Modern England, c.1500-1700* (Cambridge, 2000); C. Storrs, *The Resilience of the Spanish Monarchy, 1665-1700* (Oxford, 2006), 191-230; W. Beik, *Absolutism and Society in Seventeenth-Century France: State Power and Provincial Aristocracy in Languedoc* (Cambridge, 1998), 177-219; H.W. Koch, ‘Brandenburg-Prussia’ in John Miller (ed.), *Absolutism in Seventeenth Century Europe* (Basingstoke and London, 1990), 123-156, at 141-142 and at 147; R.J.W. Evans, ‘The Habsburg Monarchy and Bohemia, 1526-1848’ in M Greengrass (ed.), *Conquest and Coalescence: The Shaping of the State in Early Modern Europe* (Sevenoaks, 1991), 134-154, at 143-145.

the eastern Baltic, under a Palatinate-Zweibrücken dynasty which cared about little more than financial exaction.⁸ Similar strategies were imposed on such peripheral territories as Flanders, Hungary and Ireland, all of whom found themselves treated in a semi-colonial fashion by their respective rulers.⁹ There is, then, a fundamental conceptual division between ‘collaborative’ and ‘imperialist’ policy. Previous studies have tended to suggest that, in the main and despite some suggestions to the contrary, government policy towards the seventeenth-century Highlands largely fell on the ‘collaborative’ end of the spectrum.¹⁰

As a caveat to the binary ‘collaborative’/‘imperialist’ model, it should not be assumed that the role of the locality itself was necessarily passive. The periphery itself – or, more usually, peripheral elites – could push for greater state intervention or a more integrated state with the aim of sharing in the economic and political privileges enjoyed by the core.¹¹ That such interest in the potential benefits of state formation had long been apparent in the Highlands is beyond question; certain regional elites has been demanding all sorts of

⁸ A. Upton, *Charles XI and Swedish Absolutism* (Cambridge, 1997), 179-199.

⁹ A. Lottin, ‘Louis XIV and Flanders’ in Greengrass, *Conquest and Coalescence*, 84-93, at 86-92; C. Ingrao, *The Habsburg Monarchy 1618-1815* (Cambridge, 1994), 69-87; T. Bernard, ‘New Opportunities for British Settlement: Ireland, 1650-1700’ in Nicholas Canny (ed.), *The Origins of Empire: British Overseas Enterprise to the Close of the Seventeenth Century* (Oxford, 1998), 309-327, at 309-310.

¹⁰ For further discussion of this topic, see A. Kennedy, *Governing Gaeldom: The Scottish Highlands and the Restoration State, 1660-1688* (Leiden, 2014), 6-14. Contrasting perspectives emerge from J. Goodare, *The Government of Scotland 1560-1625* (Oxford, 2004) and A.I. Macinnes, *Clanship, Commerce and the House of Stuart, 1603-1788* (East Linton, 1996)

¹¹ J. Brewer, *The Fiscal Military State: War, Money and the English State, 1688-1783* (London, 1989), 14.

government interventions, most usually military campaigns, armed garrisons or judicial commissions, since at least the sixteenth century, while the most senior Highland lords, especially the Earls of Argyll, had long-standing reputations for adroit manipulation of state apparatus for local gain.¹² Thus, while assessing how far the ‘collaborative’ bent of regional government survived into William II’s reign, the following discussion will also shed some light on the survival, or otherwise, of accustomed peripheral agency in Scottish state formation.

The Highland problem in the 1690s

Until at least 1692, Williamite engagement with the Highlands was focused above all on quelling the rebelliousness unleashed by Dundee’s Jacobites.¹³ To that end, and alongside the active military campaign under the leadership of Hugh Mackay of Scourie, policy developed along two parallel tracks. Firstly, a stronger military presence was established, particularly through the foundation in 1690 of Fort William. Sitting atop the ruins of an earlier Cromwellian fortification at Inverlochy (which had also been the subject of abortive plans for fortification throughout the reigns of Charles II and James VII), Fort William was designed above all to overawe the clansmen of Lochaber, an area which had long been recognised as the epicentre of Highland disorder. In practice, the fort was neither large enough nor well enough maintained to enforce order fully, but its mere presence provided

¹² For the sixteenth century, see Goodare, *Government of Scotland*, chapter 7. The seventeenth-century situation is covered in Macinnes, *Clanship*, and Hopkins, *Glencoe*.

¹³ D. Szechi, *The Jacobites: Britain and Europe 1688-1788* (Manchester, 1994), 44-5.

William's government with a much clearer machinery for militaristic control than had been available to the Restoration regimes.¹⁴

The other main feature of Williamite policy, in recognition of the impossibility of achieving full military mastery of the vast and topographically challenging Highlands, was to coax rebellious chiefs into accepting William's government by offering various incentives. An early plan for, in essence, mass bribery through distributing honours and cash, championed by George Mackenzie, viscount Tarbat, came to naught, but was developed by John Campbell, 1st earl of Breadalbane, supported by William's secretary of state, John Dalrymple, master of Stair. Breadalbane conducted face-to-face talks with several of the leading Jacobite chiefs at Achallader in 1691, and eventually extracted agreement that they would submit to William in return for various slices of a fund worth £12,000 Scots accorded to Breadalbane to lubricate the negotiations. The date set for submission, in the form of signing the oath of allegiance to William and Mary, was 1 January 1692. All the clans signed, but Stair's decision to visit exemplary punishment on the MacDonalds of Glencoe, whose chief had done so several days late, led to the infamous massacre of around forty MacDonalds in February. Although this proved hugely damaging for the public image of William's government, necessitating a parliamentary inquiry which ultimately ended Stair's political career, the massacre in some ways merely confirmed the broader thrust of policy since 1689; a drive to incorporate the rebellious chiefs into the king's peace by, on the one

¹⁴ Hopkins, *Glencoe*, 238; Kennedy, *Governing Gaeldom*, 138-141; Lenman, *Jacobite Clans*, 45-47; Macinnes, *Clanship*, 195; A.I. Macinnes, 'William of Orange – 'Disaster for Scotland'?' in Esther Mijers and David Onnekink (eds.), *Redefining William III: The Impact of the King-Stadholder in International Context* (Aldershot, 2007), 201-223, at 208 and at 212; Riley, *Scottish Politicians*, 66-67.

hand, offering sweeteners while, on the other, threatening violent reprisals against those remaining obstinate.¹⁵

As well as tarnishing the image of William's regime in Scotland, the events culminating in Glencoe necessitated a shift in Highland policy, partly because continued reliance on military might had become too politically sensitive, and partly because the immediate Jacobite threat had clearly receded. The government thus had to consider its approach in broader terms. Many contemporaries surveying the landscape at this time were in no doubt that the region continued to present a major law-and-order problem, focused especially on banditry and animal-theft. George Melville, 1st earl of Melville, William's secretary of state, declared in 1692 that disorder of this kind was so widespread as to risk the Highlands spiralling altogether out of control, although this judgement is perhaps rather suspect given that Melville allied it to a plea that William provide his Scottish government with more money.¹⁶ Yet Melville's was not a lone voice. James Stewart of Ardvorlich, for example, complained in 1694 that:

I can never remember in a peacable tyme to see such complaints of stealing of horses, and uther beasts, as ther hes bein this tyme bygone, and such swarmes of idle rogues

¹⁵ Hopkins, *Glencoe*, chps 8-10; Lenman, *Jacobite Clans*, 48-57; Macinnes, 'William of Orange', at 208-211; Riley, *Scottish Politicians*, 67-71 and at 84; W.A. Speck, 'William III and the Three Kingdoms' in Mijers and Onnekink, *Redefining William III*, 39-52, at 47; Whatley and Patrick, *Scots and the Union*, 131.

¹⁶ W.J. Hardy *et al* (eds.), *Calendar of State Papers, Domestic Series, of the Reign of William and Mary*, 11 vols (London, 1895-1937) [CSPDW], iii, 202 and at 540.

going, without any body to notice them, and to giue the poor justice, or redress, for his loss.¹⁷

He had grown even gloomier two years later, when he described the problem as now being so serious that the ordinary mechanisms of justice were effectively useless.¹⁸ The result was that 'Highlander' became increasingly synonymous for many with 'thief', to such an extent, at least in the view of one commentator in the late 1690s, that 'pannalls being hie-land men shall be the causs of ther ruin'.¹⁹

The general discourse of inveterate Highland lawlessness long pre-dated William's reign, and the particular concern about banditry had been very much to the fore throughout the Cromwellian and Restoration periods, but during the 1690s these underlying concerns were sharpened by two additional factors.²⁰ The first related to the devastating famine which ravaged Scotland throughout the mid- to late-1690s and was felt particularly acutely in poorer regions like the Highlands, one undoubted effect of which was a spike in robbery as hunger-ravaged individuals sought to ameliorate their suffering.²¹ The second, more significantly,

¹⁷ Historical Manuscripts Commission [HMC], *Twelfth Report, Appendix, Part VIII: The Manuscripts of the Duke of Athole and of the Earl of Home* (London, 1891), 46-47.

¹⁸ *Ibid.*, 51.

¹⁹ Edinburgh, National Records of Scotland [NRS], Lord Forbes Papers, GD52/86.

²⁰ Kennedy, *Governing Gaeldom*, 66-68; D. McCormack, 'Highland Lawlessness and the Cromwellian Regime', in Adams and Goodare, *Scotland in the Age of Two Revolutions*, 115-134, at 115-121.

²¹ Cullen, *Famine in Scotland*, 90-91, 132, 161-2 and at 170 and at 190; Hopkins, *Glencoe*, 439; D. Stevenson, *The Hunt for Rob Roy: The Man and the Myths* (Edinburgh, 2004), 32; Whatley and Patrick, *Scots and the Union*, 151.

was the legacy of the Jacobite insurrections, which stimulated much more acute political mistrust of Highlanders than had existed before 1688. In December 1692, for example, James Johnston, another of William's secretaries of state, while discussing with Breadalbane the possibility of appointing judicial commissioners in the Highlands, observed that:

No doubt ther should be room left for Conscience and honor, but the pleague of it is, the same room will hold the want of them, which we Lowlanders say that you highlanders are better stocked with then with the other, but I believe after all the true caution lyes in naming honest Commissioners and that have interest, from this you will conclude knowing your Country so well as you do that ther cannot be many of them.²²

Even when falling short of Johnston's blanket denunciation of Highland untrustworthiness, many commentators still signalled their suspicion of Highlanders by adopting the well-established argument that banditry was covertly sponsored by local elites. This was certainly the view of Andrew Fletcher of Saltoun, whose caustic assessment of Highlanders as 'wretched', 'contemptible' and reliant on the proceeds of crime was underpinned by the confident assertion that they lived under 'Lords' who aimed 'to hinder them from being civilized, to discourage industry, incourage thieving, and to keep them Beggars that they

²² NRS, State Papers, SP3/1, no pagination, Johnston to Breadalbane, 8 December 1692. Johnston's suspicion led him to recommend that the government win both the earl of Argyll and the marquis of Atholl to its side, since if the loyalty of these two could be ensured, there would be no need to deal with other, less trustworthy Highlanders. NRS, SP3/1, Johnston to Portland, 24 June 1693.

might be the more dependent'.²³ Saltoun's contribution was rather hysterical, but he was not alone; Charles Maitland, the second governor of Fort William, wrote in 1698 that 'the Greatest villain in the Highlands will have his Patron', promising that 'when such Rogues fall in my way I shall endeavour to find out what Clear prove I can against them, so as their solicitors may be ashamed to owne them'.²⁴

Of course, not everybody shared these bleak assessments of the state of the Highlands. Duncan Forbes of Culloden told Patrick Hume, the future 1st earl of Marchmont, in July 1694 that 'you will hardly believe what a tendency thir miserable people have to be quyet' and argued that it would not be difficult to secure order given the right policy.²⁵ The most thoughtful contributions from this perspective were offered by the first governor of Fort William, Colonel John Hill. Throughout the 1690s he consistently argued that Highlanders were as a rule strongly inclined to live peaceably, and that only fears for their own security prompted some into disorderly action. This, he felt, was particularly true for 'the middle sort of Gentrey and Commons' who were thoroughly weary of military posturing because 'they never got anything but hurt' from it. In September 1693 he claimed that all the typically troublesome clans, including all the MacDonald septs in Lochaber, were fully law-abiding, and four months later he was confident enough to declare that 'a single person may travell safley where he will witout harme', expressing intense irritation that exaggerated stories of

²³ Andrew Fletcher, *Two Discourses Concerning the Affairs of Scotland* (Edinburgh, 1698), 23 and at 30-31.

²⁴ NRS, Breadalbane Muniments, GD112/39/177/13, Maitland to Breadalbane, 4 May 1698

²⁵ HMC, *Fourteenth Report, Appendix, Part III: The Manuscripts of the Duke of Roxburghe; Sir H.H. Campbell; The Earl of Strathmore; and the Countess Dowager of Seafield* (London, 1894), 143.

disorder continued to circulate.²⁶ Hill also questioned the link between thefts and local elites, arguing instead that the issue was 'broken men', individuals standing outwith any formal social structure who lived by theft and used their local knowledge to evade capture. His great fear was not that these bandits answered to clan chiefs, but that unwise government policy might push some kindreds to ally with them out of desperation.²⁷ Hill's optimism should not be overstated; even he acknowledged that banditry and tit-for-tat animal theft remained very real concerns, but the overall tone of his contributions was very far from the sort of alarmism produced elsewhere.

Correctives like Hill's notwithstanding, the mistrustful atmosphere of the 1690s influenced the government's strategy towards Highland government insofar as it entrenched in everybody's mind the need for continuing military deployment. Johnston wanted in 1692 to see major garrisons at Fort William and Inverness, supplemented by 'four or five little Garrisons in that tract of land which lyes betwixt them' and a further one at Ruthven, all so that 'the communication betwixt the north highlands and the west highlands may be intercepted'.²⁸ The following year, George Cuthbert of Castlehill suggested that a formal armed watch should be settled in order to deter thieves, while Tarbat in 1699 called for a detachment of 80-100 soldiers to be garrisoned at various points between Invermoriston and Loch Hourne from April to December each year.²⁹ That all this was conceived in terms of

²⁶ Edinburgh, National Library of Scotland [NLS], Yester Correspondence, 1693, MS 7015, fos. 104-105, Hill to Tweeddale, 26 September 1693; NLS, Yester Correspondence, 1694, MS 7016, fo. 34, Hill to Tweeddale, 30 January 1694.

²⁷ NLS, Yester Correspondence, 1692, MS 7014, fo. 90, Hill to Tweeddale, 16 May 1692.

²⁸ NRS, SP3/1, Memorandum on Military Establishment, 1692.

²⁹ D. Warrand (ed.), *More Culloden Papers*, 5 vols (Inverness, 1923-30), i, 233-234; Fraser, *Cromartie*, i, 136.

straightforward repression of a untrustworthy locality was confirmed by James Ogilvie, the future 1st earl of Seafield, who argued that Highlanders, all of whom had ‘bad inclinations to this government’, were only kept in line by the continuing presence of Fort William, which housed a regiment of 275 infantry and 25 grenadiers, as well as maintaining smaller satellites, including by 1695 establishments at Duart, the Treshnish Isles, Castle Tioram, Eilean Donan, Invergarry and Ruthven.³⁰ Lowland views of Highlanders had rarely been favourable, but policy under William II developed against a background of significantly heightened negative stereotyping. All of this was sharpened, of course, by the enhanced security anxieties of William’s reign more generally. Unlike either of his two immediate predecessors, William was mired in a sprawling war with Bourbon France that would continue until 1697, and during which the Highlands, along with Ireland, had already demonstrated their potential for opening up a new front and a possible back-door for Louis XIV; against this backdrop, the appeal of a military solution is hardly unfathomable. The development of policy throughout the 1690s would demonstrate that these contextual and attitudinal shifts had important implications for the government’s strategic posture towards the Highland periphery.

Establishing the Highland judicial commission

The earliest *post bellum* proposals for settling the Highlands, submitted to William by Breadalbane immediately prior to the Glencoe massacre, shared in the wider intellectual adherence to militaristic governance. Breadalbane argued for the establishment of a Highland militia, nearly 4,500 strong, drawn from all the region’s major clans and families, with the head of each kindred enjoying a captain’s commission. Serving as a supplement to William’s

³⁰ J. McCormick (ed.), *State Papers and Letters Addressed to William Carstares* (Edinburgh, 1774), 498; *Miscellany of the Maitland Club, volume III-Part I* (Edinburgh, 1842), 93-95; NLS, Yester Correspondence, 1695, MS 7019, fo. 155, Hill to Tweeddale, 11 December 1695.

modest standing forces in Scotland, this militia would be used to cow the king's enemies both at home and overseas, while also serving to 'encourage the Highlanders to the faithful' and make them 'useful and serviceable'. Breadalbane proposed that Ewan Cameron of Lochiel serve as colonel of this militia, and, although he avoided spelling it out, clearly intended that he himself should serve as its general. Understandable suspicion that Breadalbane's plan was really aimed at securing his own dominance in Highland affairs, combined with squeamishness about the prospect of incorporating into the military establishment clans, such as the Camerons and various MacDonald septs, who had recently been in rebellion, meant that his proposals were never likely to be implemented, although that did not stop Breadalbane from pursuing them for several years.³¹

Another, much less grandiose proposal centred on creating a new legal jurisdiction in Lochaber, an area whose traditional lawlessness had long been recognised to spring, in part, for its hopelessly complicated patchwork of public and private jurisdictions.³² Colonel Hill became the greatest champion of this idea; he believed that marrying his military authority as governor of Fort William with a formal civil jurisdiction was the best way of catching thieves, and that Highlanders themselves would welcome the clarity this brought.³³ Inspiration came from the Cromwellian period, when Lochaber had briefly been erected into a discrete sherrifdom with Inverlochy as its head town.³⁴ Ideally Hill wanted to see this

³¹ John Dalrymple, *Memoirs of Great Britain and Ireland from the Dissolution of the Last Parliament of Charles II to the Sea-Battle of La Hogue*, 3 vols (London, 1771-1790), ii, part 2, 217-220; HMC, *Report on the Manuscripts of Allan George Finch, Esq., of Burley-on-the-Hill, Rutland*, 5 vols (London, 1913-2003), iv, 392-393; Hopkins, *Glencoe*, 330 and at 361-362.

³² Kennedy, *Governing Gaeldom*, 75-76.

³³ CSPDW, iii, 153-154.

³⁴ F. Dow, *Cromwellian Scotland* (Edinburgh, 1979), 182.

arrangement resurrected. However, given that the creation of a whole new shire might be difficult and time-consuming, he was willing to settle for a judicial commission.³⁵ This, he envisaged, would cover all the lands formerly incorporated within the Cromwellian jurisdiction – from Ardnamurchan in the west to Badenoch in the east, and from Glengarry in the north to Rannoch in the south – and would involve delegates from the sheriffs of Inverness and Perth, as well as himself and representatives of the area's four major landholders, William Mackintosh of Torcastle, George Gordon, 1st duke of Gordon, Archibald Campbell, 10th earl (and later 1st duke) of Argyll and Lochiel.³⁶ Hill pursued his case doggedly for several years, and in the meantime accepted a position as deputy steward over the more geographically limited lordship of Lochaber, currently belonging to Torcastle, which position he used to prosecute several thieves.³⁷ Hill's ideas met with some support, and by the spring of 1693 both the king and the privy council seemed persuaded.³⁸ Yet there was anxiety in other quarters that his proposals would simply complicate Lochaber's legal landscape even further, while also opening up a Pandora's Box of competing jurisdictional claims – all of which might explain why no commission was ever forthcoming.³⁹

³⁵ NLS, MS 7014, fos. 42-43, Hill to Tweeddale, 28 March 1692.

³⁶ NLS, MS 7014, fos. 158-159, 'Proposals concerning the settlement of a jurisdiction in Lochaber to be considered by the privy council', 1692.

³⁷ NRS, Privy Council Acta, 1692-1693, PC1/48, 342-343; NLS, MS 7014, fo. 180, Hill to Tweeddale, 17 December 1692. He did so only reluctantly, complaining that the jurisdiction of the stewartry was too limited to be of much value and, in any case, that it was demeaning for the head of a royal garrison to act as deputy to a private individual.

³⁸ NRS, PC1/48, 648; NRS, Privy Council Acta, 1692-1694, PC1/49, 2.

³⁹ NLS, MS 7016, fo. 36, 'Memorandum anent Collonel Hills Commission of Justiciary', c.1694.

The government's eventual policy direction was signalled in July 1692, when the privy council commissioned a committee – consisting of Breadalbane, Tarbat, John Keith, 1st earl of Kintore and Henry Erskine, 3rd lord Cardross – to draft ‘pertinent and proper proposealls for suppressing and preventing thifts robberyes and depredationes’, with a particular remit to look at re-establishing the Highland commission created in 1682 under James, duke of Albany.⁴⁰ This original body has generally been judged favourably by historians, who often characterise it as the most well-conceived and successful of the Restoration regime's various schemes for controlling the Highlands.⁴¹ It had split the area into four distinct jurisdictions: a northern division (incorporating Caithness and Sutherland); a central division (Ross-shire, Cromartyshire, Inverness-shire, Nairnshire and Moray); an eastern division (Banffshire, Aberdeenshire, Kincardineshire and Forfarshire); and a southern division (Perthshire, Stirlingshire, Dunbartonshire and Argyllshire). Within each of these, a group of named commissioners, eventually numbering sixty-seven in all, was empowered to apprehend all thieves and put them to trial in special, biannual courts. The effectiveness of the commission in terms of curtailing Highland disorder was variable at best. The northern division does not appear to have convened at all, while the eastern and central divisions met only occasionally and had little impact. The southern division alone showed any measurable zest. Meeting at least twenty-five times between 1682 and 1688, it engaged in a range of activities, including arbitration, prosecution and the collection of sureties from kin elites,

⁴⁰ NRS, PC1/48, 340-341.

⁴¹ T. Harris, *Restoration: Charles II and His Kingdoms, 1660-1685* (London, 2005), 358; Hopkins, *Glencoe*, 92-93; Macinnes, *Clanship*, 139; A.J. Mann, *James VII: Duke and King of Scots 1633-1701* (Edinburgh, 2014), 145; D. Stevenson, *Highland Warrior: Alasdair MacColla the Civil Wars* (Edinburgh, 1980), 291. For a slightly less positive judgement, see J. Callow, *The Making of King James II: The Formative Years of a Fallen King* (Stroud, 2000), 289.

which allowed for some real success in curbing theft, particularly during its first two years. But perhaps more important than the success or failure of the commission was that it represented the Restoration's most thoughtful compromise between two long-competing strategic impulses: direct rule from Edinburgh on the one hand, and indirect control through the influence of local social elites (many of whom were named amongst the commissioners) on the other.⁴²

The re-establishment of the Highland commission initially progressed swiftly, and by August 1692 a draft act had been prepared. But this version, according to Johnston, attracted 'Great objections', partly because it was 'loose drawn', envisaging the appointment of Breadalbane as sole commissioner (a fact which surely reinforced those anxieties about Breadalbane's intentions raised by his militia scheme) and giving him so much power as to be widely thought illegal. More significantly, vociferous opposition came from Argyll, who complained that the commission could not, as proposed, include Argyllshire, since he held this as a regality jurisdiction.⁴³ The council delegated Tarbat to investigate previous judicial commissions in the Highlands in order to determine how Argyll's rights had been dealt with, and in the meantime dispatched the draft act to London for William's attention.⁴⁴ There, despite the king's stated support, it became stuck. Tarbat was unable to find any precedent for a Highland commission including Argyllshire, with the exception of Albany's grant made when the Argyll family had been forfeited, and nor was the chancellor, John Hay, 2nd earl of

⁴² P.H. Brown *et al* (eds.), *The Register of the Privy Council of Scotland, Third Series, 1661-91*, 16 vols (Edinburgh, 1908-1970) [RPCS], vii, 507-515. For the fullest account of the first Highland commission, see Kennedy, *Governing Gaeldom*, 237-249.

⁴³ NRS, SP3/1, Johnston to Stair, 13 August 1692; HMC, *Finch*, iv, 392-393.

⁴⁴ NRS, PC1/48, 371, 385 and at 395.

Tweeddale, whom William had also asked to investigate.⁴⁵ Yet William was unwilling to grant any commission that did not cover Argyllshire, and he does not seem to have much cared for Argyll's alternative – that the earl himself would grant commissions within Argyllshire to those recommended by the king.⁴⁶ The privy council grew restless at these delays, and in March 1693 they implored Johnston to procure the establishment of the commission as a matter of urgency, suggesting that a time-limit of three years be imposed if this helped assuage Argyll's fears.⁴⁷ But agreement remained elusive, and so – in an interesting reflection of the post-revolution constitutional set-up – William referred the issue to Parliament for the final word.⁴⁸

When Parliament considered the matter in June 1693, it endorsed Argyll's proposal, and from this basis authorised the creation of a judicial commission, which permission was to last until 1695. Utilising this power, William signed off on a two-year commission on the last day of December, and the privy council formally established it in February 1694. The grant was re-issued several times. Parliament's initial authorisation was renewed for periods of between one and three years in 1695, 1696, 1701 and 1702, and the commission itself, although technically expiring in February 1696, seems to have continued functioning and was formally reconstituted in March 1697, to endure until 31 December 1699. Again it was not immediately renewed after this latter date, largely because William was unable to secure parliamentary authorisation during the short, tumultuous session of May 1700, dominated by recriminations over the recent Darien disaster. Yet it remained the cornerstone of Highland

⁴⁵ NRS, SP3/1, Johnston to Tweeddale, 26 November 1692.

⁴⁶ NLS, MS 7015, Stair to Tweeddale, fos. 7-8, 4 January 1693.

⁴⁷ NRS, PC1/48, 648; J. Gordon (ed.), *Papers Illustrative of the Political Condition of the Highlands of Scotland from the Year 1689 to 1696* (Glasgow, 1845), 89-90.

⁴⁸ NRS, SP3/1, Johnston to Argyll, 28 March 1693.

policy, and when the more tightly-managed (though still tense) session of 1700-01 duly gave its assent, the commission was renewed in March. The final re-issue, prolonging the commission until July 1705, was passed by Anne nine months into her reign.⁴⁹

As an explicit resurrection of Albany's policy, it is hardly surprising that the Williamite commission followed the basic model of splitting the Highlands into separate zones, although since there were now only three as opposed to the original four, the precise borders between them were reworked.⁵⁰ The northern division now incorporated all the territory north of the Spey, while the southern no longer included Argyllshire. Only the eastern division remained unchanged.⁵¹ The 1697 re-issue retained this structure, but there was a re-organisation in 1701, which provided for only two divisions – a northern covering Ross-shire, Inverness-shire, Nairnshire, Moray, Banffshire and Aberdeenshire (Caithness and Sutherland having been dropped entirely), and a southern incorporating Kincardineshire, Forfarshire, Perthshire, Stirlingshire and Dunbartonshire. This remained the format under Anne.⁵²

⁴⁹ K.M. Brown *et al* (eds.), *Records of the Parliaments of Scotland to 1707* (St Andrews, 2007-2015), www.rps.ac.uk [RPS], 1693/4/124, 1695/5/203, 1696/9/173, A1700/10/51 and at 1702/6/56; CSPDW, viii, 79-80, ix, 318, xi, 337-344; R.P. Mahaffy *et al* (eds.), *Calendar of State Papers, Domestic Series, of the Reign of Anne*, 3 vols (London, 1916-2005) [CSPDA], i, 353-356; Gordon, *Papers*, 89-90 and at 92; J.R. Young, 'The Scottish Parliament and the Politics of Empire: Parliament and the Darien Project, 1695-1707', *Parliaments, Estates and Representation*, 27:1 (2010) 175-190, at 182-184.

⁵⁰ The earliest draft, drawn up in 1692, apparently envisaged only two divisions – one for Lochaber, and one covering the rest of the Highlands. NRS, PC1/48, 648.

⁵¹ NRS, PC1/49, 251-259.

⁵² *Commission of Justiciary for Securing the Peace of the Highlands* (Edinburgh, 1697), 1; CSPDW, xi, 339-344; CSPDA, i, 355-356.

If the structure of the commission demonstrated some clear continuity between 1682 and 1694, the same could be said about the powers granted to the commissioners. They were to apprehend criminals within the Highlands and try them at specially-constituted justice courts, which would have the power to impose any punishment up to and including execution. They were to receive the fulsome co-operation of all existing magistrates, and they were to have the power to enforce all existing statutes relevant to preserving the peace. It was also mandated that nobody within the Highlands would be permitted to bring livestock to market without a landholder's testimony, and that armed persons travel no more than seven miles from their homes without a similar pass, two orders which the commissioners were empowered to enforce. All this paralleled the terms of the 1682 commission – often, indeed, using almost identical wording – but there were some key differences. Albany's commission had focused heavily on catching thieves and associated wrongdoers, but the Williamite version also covered murder and manslaughter. Additionally, the 1682 grant provided precise instructions about where and how often justice courts were to be held, guidance missing in 1694, when instead convenors for each of the divisions were named and told to hold courts as often as deemed necessary. Finally, the Williamite commission ordained that the three divisions were to co-operate closely, especially by holding at least one joint meeting per year, an instruction not included in the original grant (although calls for such co-operation did quickly develop).⁵³ These differences, individually relatively minor, suggest when taken as a whole that the resurrected Highland commission was intended to provide its recipients with a

⁵³ There is some evidence that inter-divisional co-operation genuinely did occur. For example, Tullibardine in 1699 transmitted a request of the northern and southern divisions to their eastern counterpart suggesting a joint conference in Forfar. J. Grant (ed.), *Seafield Correspondence from 1685 to 1708* (Edinburgh, 1912), 262.

rather broader law-enforcement mandate, while also giving them greater discretion in how to wield it.

There were other, more obvious differences. The Williamite commission was much larger. Against the sixty-seven individuals ultimately appointed in the 1680s, the grant of 1694 contained 124 names, a figure which was revised down very slightly to 122 for the 1697 re-issue. By 1701, however, numbers had risen to 210, while the final award at the start of Anne's reign brought the tally to 280. But it was not just in the size of the commission that change was evident; it could also be traced in the identity of the commissioners. Albany's commission had consciously sought to involve Highlanders, so that about half of those appointed were members of major kindreds, with most of the rest being Highland residents. While the revived commission did involve some Highlanders – especially by the time of Anne's grant, when the new queen's favour for Tarbat was reflected in a notable increase in Mackenzie commissioners – the overwhelming weight of appointments went to individuals from outside or on the fringes of the Highlands. This reflected the contemporary mood of political mistrust towards Highlanders in the aftermath of the Jacobite rising, and the result was that the commission's work, in stark contrast to the 1680s, tended to be conceptualised as an exercise in imposing order from outside. This stance was made clear in 1699 when a committee of the privy council recommended that the soon-to-be-renewed commission should contain 'fewer highlanders and a great number of Lowlanders' and that 'they be restricted positive to meddle in no actions but in thefts robberies and slaughter committed in the highlands and by highlanders'.⁵⁴

⁵⁴ J. Allardyce, J. (ed.), *Historical Papers relating to the Jacobite Period 1699-1750*, 2 vols (Aberdeen, 1895-1896), i, 3.

Just as significantly, the triumphant assertion of aristocratic power which characterised post-revolution Scotland ensured that the explicit intention of Albany's commission to bypass the great regional magnates would not be carried forward.⁵⁵ Instead, the mood was captured by James Stewart of Ardvorlich when he advised John Murray, lord Murray to serve on the commission if asked, because 'such as your lordship being jouyn'd, wold make thes courts appear the more splendid, and with the more authoritie'.⁵⁶ Murray was indeed named, alongside seven other peers, including George Gordon, 14th earl of Sutherland, his son John Gordon, lord Strathnaver, Hugh Fraser, 9th lord Lovat, David Ruthven, 2nd lord Ruthven, Andrew Rollo, 3rd lord Rollo and, once again, Breadalbane. The roll-call of peer-commissioners grew with subsequent re-grants; there were sixteen in 1697, twenty-three in 1701 and twenty-one in 1702. The realities of power meant that these nobles would naturally dominate the commission. In 1697, for example, a meeting of the commissioners of the eastern district at Huntly was adjourned, and trial of seven men postponed, because James Ogilvie, 3rd earl of Findlater was unable to attend; the remaining commissioners did not want to proceed without his input.⁵⁷ Such reliance on the aristocracy was informed by the political climate of the 1690s, but also probably reflected elite memory of Albany's commission, whose rejection of noble influence had elicited vocal hostility at the time.⁵⁸ It was not, however, to everyone's taste. Culloden wondered in 1694 whether giving nobles undue

⁵⁵ K. Bowie, 'New Perspectives on Pre-Union Scotland' in Tom Devine and Jenny Wormald (eds.), *The Oxford Handbook of Modern Scottish History* (Oxford, 2014), 303-319, at 308.

⁵⁶ HMC, *Athole*, 47; Whatley and Patrick, *Scots and the Union*, 104-107.

⁵⁷ Grant, *Seafield Correspondence*, 217.

⁵⁸ See, for example, the petition drawn up on behalf of 'the Marquis of Atholl [...] the duke of Gordon, [and] the Earles of Mar and Airly' seeking curtailment of the commission's influence. NRS, Erskine of Kellie and Marr Papers, GD124/6/124.

power might end up undermining the commission, since ‘were the Highlands peaceable and honest, great lords find that they would be no more necessary’ – probably an allusion to Breadalbane, the would-be chief solver of Highland problems.⁵⁹ If employing peers risked putting the commission at the mercy of private agendas, it also represented another departure from the spirit of 1682; direct engagement with chiefs, landlords and heritors gave way to more conventional reliance on noble power.

A further striking difference between the Albany and Williamite commissions was their treatment of Argyllshire. This county had been incorporated within the southern division of the original commission, and had been subject of some of its most concerted attention. But as noted above, it was excluded from the Williamite commission thanks to the objections of Argyll, who was simply requested to grant his own sub-commissions to such of William’s appointees as seemed appropriate. In effect, Argyllshire thus formed a separate fourth (and, after 1701, third) division, wholly under the sway of Argyll. This compromise reflected an extraordinary rebound in Campbell fortunes. Argyll’s grandfather had been executed for treason in 1661, and after his father was convicted of the same crime in 1681, the Argyll estates had been forfeited, leaving lord Lorne, as he then was, a politically inconsequential outcast dependent upon a modest pension gifted by James VII. But Lorne was an early and enthusiastic convert to the cause of William of Orange, a shrewd move which saw his estates and privileges restored in 1689.⁶⁰ While this did not immediately resurrect the almost viceregal authority which the Campbells had conventionally enjoyed – something perhaps reflected in the earl’s relative invisibility on the national political stage until about 1697 – it did restore his regality powers in Argyllshire, giving him almost total control over the judicial

⁵⁹ HMC, *Roxburghe*, 144.

⁶⁰ For an accessible narrative of the Campbells’ fluctuating fortunes in the later seventeenth century, see R.C. Paterson, *No Tragic Story: The Fall of the House of Campbell* (Edinburgh, 2001).

infrastructure of the county and effectively making any commission imposed over his head unworkable.⁶¹ The eventual terms were thus a formal recognition of Argyll's renewed power, reflecting again the extent to which the 1682 ambition of engaging with a broader cross-section of Highland society had been abandoned.

A final point of divergence between the commissions of the 1680s and 1690s concerns the use of military reinforcement. Charles II and James VII presided over governments which were more thoroughly militarised than those of any previous monarchs, and which were also more inclined to use military force to maintain domestic order.⁶² But the militaristic bent of the Restoration was as nothing compared to developments under William II, whose reign saw not only a massive expansion of the army establishment, but also a move towards full professionalisation.⁶³ The effect of this on Highland policy more generally has already been noted, but it can also be traced through the Highland commissions. Albany's commissioners had merely been supported by armed escorts totalling between 100 and 150 men, charged with protecting them and enforcing their orders.⁶⁴ From the beginning, the militaristic aspect of the Williamite commission was much more pronounced, not least because a provision for armed reinforcement from Fort William was actually written into its terms.⁶⁵ Despite this, additional military muscle was often deployed during the 1690s. In

⁶¹ D. Patrick, 'People and Parliament in Scotland 1689-1702' (University of St Andrews, PhD thesis, 2002), 69-70.

⁶² M. Lee, *'Dearest Brother': Lauderdale, Tweeddale and Scottish Politics, 1660-1674* (Edinburgh, 2010), 316-317.

⁶³ Macinnes, 'William of Orange', at 212.

⁶⁴ National Register of Archives for Scotland 234, Atholl Estates, box 29/I/12, item 33; Kennedy, *Governing Gaeldom*, 133-134.

⁶⁵ NRS, PC1/49, 257.

1697, the commissioners of the southern district requested, and were granted, reinforcement from three companies of the regular army, to be posted at Rannoch, Strathearn and Glenshee, ‘for stopping and repressing the Convocations of broken and louse men’, while the northern commission was simultaneously bolstered by a company dispatched to patrol the Great Glen.⁶⁶ Two years later, orders were released for the establishment of six Highland garrisons over and above Fort William’s outposts. These were each to be manned by twenty soldiers from the regular army, and were to be sited initially at Blair Atholl, Kenaclacher, Loch Dochart, Kilmahog, Drymen and Achallader, with a seventh, at Findhorn Bridge, added in 1700 – all of which chimed with the wishes of the Highland commissioners, who in a general meeting in March 1699 sought the government’s help to combat ‘the Troublesome caice of that Countrey’.⁶⁷

Such militarism reached its zenith in 1701, when the government resurrected the independent companies.⁶⁸ Pioneered in the 1660s and 1670s as a means of providing coercive muscle for a slightly different judicial commission, the independent companies had been dormant since 1678.⁶⁹ The ground for their reinstatement was prepared by Parliament, which in January 1701 authorised the creation of two companies of up to 100 men each to assist the

⁶⁶ NRS, Privy Council Acta, 1696-1699, PC1/51, 216-217.

⁶⁷ *Ibid.*, 560; NRS, Privy Council Acta, 1699-1703, PC1/52, 86. Another garrison, at Eilean Donan, was ordered to be established in 1701, although this was earmarked specifically for combatting a reported upsurge in Catholic missionary activity in Ross-shire, rather than general peace-keeping. PC1/2, 217-218.

⁶⁸ At least one person – James Stewart of Ardvorlich – had been calling for this as early as 1696. HMC, *Athole*, 51.

⁶⁹ Kennedy, *Governing Gaeldom*, 131-132.

commissioners.⁷⁰ The following June, William appointed Alexander Campbell of Fonab (a veteran of Darien) as captain of a company attached to the southern district, with one William Grant commissioned for the northern division's company. Both men were accorded just over £915 of public money to raise a 60-strong force of regular soldiers, as well as two lieutenants, three sergeants, two corporals and two drummers each.⁷¹ These companies developed a general facilitative function, such as arresting thieves for the commissioners to try or guarding their meetings, but they were occasionally deployed for more specific purposes. Grant's company, for example, was heavily involved in combating the disorders occasioned in the Inverness area by a bitter succession dispute gripping the Frasers of Lovat, whether by quelling a riot in Beauly in August 1702 or quartering in Fraser-controlled Stratherrick for part of 1704.⁷² All the while, of course, Fort William continued providing a fixed presence, and outside soldiers were still occasionally dispatched, including a twenty-strong escort sent from the garrison at Stirling castle to attend a meeting of the southern commissioners in March 1702.⁷³ The result of all this was to give the Williamite commission a much more aggressive and militaristic character than its Restoration forerunner.

⁷⁰ *RPS*, A1700/10/51. An alternative act, drafted by Culloden and which would also have obliged Fort William to establish garrisons at Ruthven, Kilchuimen, Invermoristom and 'Erkles' alongside a garrison of regular soldiers at Corgarff, failed to progress through Parliament. Warrand, *More Culloden Papers*, i, 267; Hopkins, *Glencoe*, 469.

⁷¹ *CSPDW*, xi, 376-377; *NRS*, PC1/52, 243-244.

⁷² *NRS*, PC1/52, 502; J. Murray (ed.), *Chronicles of the Atholl and Tullibardine Families*, 5 vols (Edinburgh, 1908), i, 497-498. For the most useful account of the Fraser succession dispute, as well as the activities in this period of the notorious Simon Fraser, 11th lord Lovat, see Hopkins, *Glencoe*, 443-475.

⁷³ *NRS*, PC1/52, 373-374.

Historians have tended to perceive in the Williamite period strong continuities with the Highland policy of the Restoration, most notably in the persistent reliance on the Campbells as key regional allies and in the use of militia forces to achieve a form of ‘absolutism on the cheap’. Such points of similarity certainly existed, and to them can of course be added the resurrection of the Highland commission, but they conceal a deeper shift.⁷⁴ The differences between the 1682 and 1694 commissions in terms of powers, size, personnel, geographical extent and military coercion suggest significantly altered thinking on the government’s part. Where Albany’s commission had attempted to strike a conciliatory tone and forge an alliance between central government and the key Highland kindreds, William’s version was much more high-handed, preferring not to work with Highlanders below the level of the peerage and instead adopting a considerably more detached and militarised posture. As such, the second Highland commission stood as testament to the extent to which the Restoration’s vacillation between ‘imperialist’ and ‘collaborative’ approaches had under William II been decided in favour of the former.

The business of the commission

If the objectives and strategic underpinnings of the renewed Highland commission can be pieced together, reconstructing its actual workings on an everyday level is much more difficult. This is largely because no systematic records have been left; indeed, the only extant minutes of any kind were generated by the semi-detached jurisdiction of Argyllshire, and relate only to a few brief months in the autumn of 1694.⁷⁵ A comprehensive survey of the commission’s work is therefore unattainable, but enough scattered evidence does exist to

⁷⁴ Hopkins, *Glencoe*, 436-475; Macinnes, *Clanship*, 130-137 and at 194-6.

⁷⁵ NRS, Inveraray Sheriff Court: Book of the Justiciary Court of the Highlands, 1694, SC54/17/1/5.

suggest that three broad classes of activity were undertaken: prosecution, arbitration and supervision.

Prosecuting criminals is the bread and butter of any judicial body, and the Highland commission was no different. The limited minutes surviving from Argyll's division reveal three instances in 1694, involving citations for theft of Archibald MacLean of Ardross, Donald McEan of Appin and Neill McDougall of Knoydart.⁷⁶ Donald McEan was cited before the northern commissioners at Inverness in 1699 to answer charges of robbery, although it is unclear whether he was actually tried.⁷⁷ Six more northern prisoners were named in March 1702, when each of them – Alasdair mor MacDonald (on whom see below), John MacAllan, Archibald MacQueen, Angus McEven, William McFerrill and Even McWilliam – had their death sentences suspended by the privy council.⁷⁸ The eastern division is known to have sentenced one notorious thief and vagabond, Charles MacLachlan, to banishment during the 1690s (although since he escaped from his preliminary incarceration at Banff, his actual fate is unclear), while a group of 'Lochquhaber men' was also prosecuted in the same decade.⁷⁹ In the southern division, Breadalbane's assistance was sought in 1697 in the apprehension of a horse-thief named only as 'McLauren Beine'.⁸⁰ A privy council proclamation from the same year, offering rewards of £10 Sterling for the return of five fugitives from the southern commissioners – Duncan Stewart, Patrick Ferguson, John MacGregor, Duncan Macilphatrick and John MacLaren – offers further evidence of

⁷⁶ *Ibid.*, 12 and at 14.

⁷⁷ NRS, PC1/52, 150.

⁷⁸ PC1/52, 385.

⁷⁹ NRS, GD52/85, 86.

⁸⁰ NRS, GD112/39/175/16, Duncan Graham to Breadalbane, 20 September 1697

prosecutions.⁸¹ One particularly interesting case took place at Perth in December 1701, when the southern commissioners sentenced several convicted thieves to perpetual servitude as an alternative to death.⁸²

As well as prosecuting wrongdoers, the commissioners also arbitrated disputes. In January 1695, for example, the northern commissioners issued their judgement in a disagreement brought before them by Alexander Clerk of Badenoch. He claimed that three oxen, one cow and one bull had been stolen from his lands by a group of four men. The commissioners upheld his complaint and ordered the guilty parties to repay the cost of the lost livestock alongside damages and court expenses, coming in total to more than £255.⁸³ This was not an isolated example. In 1694, the northern commissioners were called upon to settle an unspecified dispute between the Macleans of Tarbert and the Campbells of Barbrek; they remitted it to Argyll's division, which considered it in October, although the eventual settlement, if any was reached, is not recorded.⁸⁴ The northern division also arbitrated in a complaint raised in 1697 by Tarbat against John Grant of Glenmoriston, relating to the theft of £1,300 of goods from Tarbat's lands by tenants of Glenmoriston.⁸⁵ In the middle district, Breadalbane was judged in 1698 to owe more than £830 to Archibald Stirling of Carden following thefts committed by his dependents, and in the same year, the commissioners heard a complaint brought by Thomas Buchanan of Harpertown on behalf of his tenant, Isobel

⁸¹ NRS, PC1/51, 234 and at 238-239.

⁸² Murray, *Chronicles*, i, 492-495.

⁸³ NRS, Menzies of Menzies Papers, GD1/449/364.

⁸⁴ NRS, SC54/17/1/5, 12.

⁸⁵ NRS, Mackenzie of Cromartie Papers, GD305/1/157/57. The sheriff court of Inverness had in fact already judged in Tarbat's favour, but the commissioners added their weight so that a party of soldiers might be dispatched to help recover Tarbat's losses.

McLuckie, seeking to recover goods valued at a little over £2,000 allegedly stolen by the Camerons.⁸⁶ These scattered examples demonstrate that civil arbitration was a clear part of the Highland commission's work after 1694, even if there is insufficient evidence to judge whether it was as central a preoccupation as it had been for the commissioners of the 1680s, whose southern number arbitrated more than 200 cases in their first four years of activity.⁸⁷

The commission also had a degree of administrative and regulatory responsibility, which can be seen most clearly in the activities of Argyll's division. Throughout the autumn of 1694, ordinances were issued against carrying unlicensed arms (31 August), for the disbandment of watches on the grounds of their alleged association with the extortion of blackmail money (9 September), for the regulation of ferry boats (15 October) and for the appointment of parish constables throughout Argyllshire (15 October). Efforts were also made to enforce the proscription of the MacGregor surname by ordering all bearing that name within the shire to provide caution for assuming an alternative designation. At least two MacGregors subsequently appeared before the commissioners for just this purpose. Both were named John MacGregor, but one became a MacLauchlan, while the other took the name Campbell.⁸⁸ While there is much less evidence of the other divisions engaging in this kind of social and political regulation, it cannot have been unknown, since in May 1699 the eastern commissioners, responding to a petition from the presbyteries of Turiff, Alford and Fordyce, forbade all Highland residents of Aberdeenshire and Banffshire from prophaning the Sabbath by transporting timber to market.⁸⁹

⁸⁶ NRS, MacNeill of Taynish Papers, GD427/150; NRS, Cunninghame Graham or Ardoch Papers, GD22/150-154.

⁸⁷ Kennedy, *Governing Gaeldom*, 241-242.

⁸⁸ NRS, SC54/17/1/5, 2, 3, 5, 6 and at 10-11.

⁸⁹ NRS, GD52/82.

Yet the most important administrative function of the commission was probably its role in collecting bonds of caution. Perpetuating a major facet of Albany's policy, the commissioners were empowered to demand from all landholders rosters of the men above twelve years dwelling on their lands, for whom the granter would be required to give security for their 'future peaceable Deportment'.⁹⁰ In Argyll's division, a general call for bonds was released at the end of August, and clerks were employed – with elevated pay in recognition of their pains in 'attending att the Courts in so remote a country' – in order to register them. Bonds were to be delivered at Inveraray on specified days: landlords in Cowal were to attend on 9 October, with those from Argyll, Lorne, Kintyre and the isles (Islay, Colonsay and Jura) on subsequent days. Later the commissioners established a 'drop-in' station at Inveraray to receive bonds from anybody who had missed these deadlines.⁹¹ Bonds were demonstrably collected in other divisions as well, for example in Perthshire (southern division) in 1695 or Braemar (eastern division) in 1699.⁹² However, the commissioners did not simply limit themselves to collecting bonds mandated by central government. In 1699, the eastern commissioners, concerned about 'The Troublesome caice of that Countrey by some of the mcdonalds And other Louse persones', proposed to the privy council to solve the problem by means of an additional bond drawn up by themselves. The council agreed in principle, although it reserved the right to amend the commissioners' wording in line with the law.⁹³

Although evidence pertaining to the day-to-day workings of the Highland commission is scant, this has not precluded those few historians who have studied it from judging it

⁹⁰ *Letters of Publication of a Commission under the Great Seal, for Securing the Peace of the Highlands in Scotland* (Edinburgh, 1694), 4.

⁹¹ NRS, SC54/17/1/5, 3, 4, 7 and at 14.

⁹² NRS, Drummond Family, Earls of Perth, GD160/212; NRS, GD52/84.

⁹³ NRS, PC1/51, 567.

harshly. For Paul Hopkins, the Williamite commission enjoyed none of the success of its 1680s predecessor, partly because it was upstaged as a peace-keeping institution by the garrison at Fort William, but more importantly because it was quickly captured by private interests who turned it into a dubious vehicle for score-settling.⁹⁴ Allan Macinnes agrees, suggesting that the commission was hamstrung by ‘political influence and judicial partiality’.⁹⁵ It is certainly true that serious challenges emerged, not least of which was the difficulty in persuading those named as commissioners actually to serve. The early omens were not encouraging. The 1694 grant fixed 13 March as the date for the inaugural meeting of the commissioners. On 5 April, however, the privy council was forced to announce a revised date of 22 May, since ‘the day appointed [...] is elapsed And that the Commissioners have not mett together’.⁹⁶ In confirmation of these early challenges, both Hill and Culloden reported in July that it was proving difficult to assemble sufficient commissioners to establish justiciary courts in the Lochaber area, a problem which persisted at least until the autumn of 1695, when Hill was prosecuting thieves under his own authority as governor of Fort William.⁹⁷ In Argyll’s division, at least one court, in October 1694, was delayed for want of a quorum, eventually meeting more than a month later.⁹⁸ These cannot be dismissed as simply teething problems. In April 1699, Alexander Duff of Braco sent a request to William Forbes, 12th lord Forbes that he use his influence to persuade more commissioners to make appearances at the habitually under-attended eastern courts.⁹⁹ A court at Inverness collapsed

⁹⁴ Hopkins, *Glencoe*, 470-471 and at 492-493.

⁹⁵ Macinnes, *Clanship*, 195.

⁹⁶ NRS, PC1/49, 342.

⁹⁷ HMC, *Roxburghe*, 124 and at 143; Warrand, *More Culloden Papers*, i, 223.

⁹⁸ NRS, SC54/17/1/5

⁹⁹ Grant, *Seafield Correspondence*, 262.

two years later for a slightly different reason; this time, a quorum of commissioners had attended, but the court officers had not, meaning no business could be transacted.¹⁰⁰ By this point, the privy council itself was dealing with some of the consequences of such reluctance to serve; the grant of 1701 specified 1 January 1702 as the deadline by which commissioners should qualify themselves by taking the oath of allegiance, but a sluggish response-rate forced this date to be pushed back repeatedly, eventually to 15 May.¹⁰¹ Unwillingness to perform public duties was a common feature of the magisterial model of local government characteristic of the early-modern period, often rooted in the perceived expense, inconvenience or danger of the role.¹⁰² That the Highland commission faced such reluctance was therefore hardly surprising, but it nonetheless represented a significant difficulty to its proper implementation.

Perhaps more importantly, the commission was repeatedly condemned for its excessively relaxed attitude towards judicial fairness and due process. In July 1696, Dugall McGillichallum complained to the privy council that he had been held in custody at Perth for seven months – and thereby suffered great hardship – on account of a riot committed on Patrick Grant of Lethinty, despite having paid a fine mandated by the commissioners and received absolution from Lethinty. The council heard his petition sympathetically, and ordered his release.¹⁰³ While McGillichallum's complaint concerned the southern commissioners, more consistent criticism was levelled at the northern division. For Colonel

¹⁰⁰ *Ibid.*, 340-341.

¹⁰¹ NRS, PC1/52, 295-297, 329-330 and at 351.

¹⁰² In Scotland, relatively low-status justice of the peace commissions were especially vulnerable to the problem of unenthusiastic appointees. J. Findlay, *All Manner of People: The History of the Justices of the Peace in Scotland* (Edinburgh, 2000), 50-54.

¹⁰³ NRS, Privy Council Acta, 1694-1696, PC1/50, 602-603.

Hill, writing in 1697, the northern commissioners' zeal for imposing crippling fines on those cited before them was such that many in Lochaber were 'beggered'. Some resorted to theft as a result – which, of course, invited further citations and fines.¹⁰⁴ Similarly excessive enthusiasm was displayed by James Wiseman, procurator-fiscal for the northern commissioners, when he led a party of armed men to impound the goods of the Logies of Bodom in 1700, thereby extracting a bond for 560 merks. He did this in response to John Bodom younger's failure to answer a citation for wounding one of the Grants of Ballindalloch, even though the commissioners had not given him formal authority to do so. In any case, the Logies had already paid a fine levied by the local sheriff. Wiseman's actions were declared illegitimate by the Court of Session, which dissolved the bond.¹⁰⁵ The Session dealt with another complaint against the northern commissioners in early 1702, when James Sinclair, brother of William Sinclair of Dunbeath, alleged that he had been illegally imprisoned until he agreed to pay a fine of 3,000 merks for raiding the lands of the Dunbars of Hempriggs. This was especially unjust, Sinclair argued, because the raid in question had been conducted in order to recover livestock originally stolen from him.¹⁰⁶

Yet the most infamous case of judicial heavy-handedness concerned an accused thief and robber named Alasdair mor MacDonald, who was convicted by the northern commissioners at Aberdeen in December 1701. The trial had been hurriedly organised, and MacDonald complained to the privy council of harsh and irregular treatment, including failure to provide him with adequate (Gaelic-speaking) legal representation, admission of illegitimate witnesses and mid-trial alteration of his indictment. The council suspended

¹⁰⁴ Fraser, *Cromartie*, i, 124-125.

¹⁰⁵ J. Lauder, *The Decisions of the Lords of Council and Session, from June 6th 1678 to July 30th 1712*, 2 vols (Edinburgh, 1859-1861), ii, 89.

¹⁰⁶ *Ibid.*, 140 and at 148.

MacDonald's death sentence pending investigation by a conciliar committee; this body initially approved the commission's actions (although only on the casting vote of the chancellor, Marchmont), but barely a week later, after another petition from MacDonald, the death sentence was suspended permanently. However, William II let it be known that he did not approve of such clemency, and heeding the royal cue, the northern commissioners lodged a formal protest while launching fresh trials; ultimately MacDonald endured at least three at their hands. There was even talk of indicting him for treason, although on what grounds are unclear. MacDonald's ordeal came to an end when, shortly after her accession, Queen Anne suspended all current and future trials, and ultimately, in July 1702, the council decided that MacDonald should be transported.¹⁰⁷ The whole affair encapsulated the wider sense that the Highland commission's treatment of accused individuals was not only unduly vindictive, but also coloured by worrying procedural laxity.

The commissioners' handling of bonding also elicited some accusations of injustice. There was a certain degree of aristocratic resistance on principle; the privy council in November 1694 received a letter from the southern commissioners informing them that the local noblemen 'refuseth to give bond to these Commissioners for the peace', arguing that their dignity demanded they submit only to the council itself. Although nobles within the northern division had given bonds as requested, the council, after several weeks' consideration, agreed that Highland aristocrats should give their bonds to the council, not the commissioners.¹⁰⁸ Elsewhere, some felt the bonds implied too extensive a responsibility on

¹⁰⁷ NRS, PC1/52, 286-287, 307, 309-310, 323-326, 329, 332,333-335, 384-385, 422-424, 445-446 and at 486-487; CSPDA, i, 15; Allardyce, *Jacobite Period*, i, 26-27; Grant, *Seafield Correspondence*, 342-343, 345 and at 346; Warrand, *More Culloden Papers*, i, 268-267, 269-272 and at 274-276. The MacDonald case is narrated in more detail in Hopkins, *Glencoe*, 470-471.

¹⁰⁸ NRS, PC2/50, 36-37 and at 51-51.

the part of the granter. In Argyll's semi-detached division, he and his commissioners agreed, 'vpon a Representation made by the heretors', that, rather than implying an open-ended obligation covering all dependents, those taking bonds would be liable only for a defined list of 'menteners servers and those desinded of ther familys' to be affixed to the beginning of their bonds.¹⁰⁹ In other cases, there were accusation that bonds were not freely given; this was certainly the complaint made by Alexander Strachen of Glenkindy, who objected to being pursued by the commissioners for a theft committed by one of his men in 1698, arguing that the bond on which this prosecution was based had been extracted forcibly by unspecified threats.¹¹⁰ The most extensive complaint against bonding was lodged in 1699 by the heritors of Banffshire and Aberdeenshire. They demurred from giving the bonds required from them by the northern commissioners on ten grounds, some simply procedural, but others rooted in the more substantive objection that it was legally questionable to make one individual, even a landholder, fully responsible for the actions of others, especially when their day-to-day control over such people might be weak.¹¹¹ This was not a new objection, and had been used to scupper earlier efforts at tackling Covenanting nonconformity in the Lowlands via similar bonds.¹¹² Its reappearance in the 1690s confirms the wider sense that the use of bonding by the Highland commissioners was not without significant controversy.

Perhaps the most telling criticism levelled at the Highland commission was its vulnerability to corruption through elite influence. There can be little doubt that powerful local luminaries, particularly peers, wielded considerable control. When Argyll made his first

¹⁰⁹ NRS, SC54/17/1/5, 9.

¹¹⁰ Lauder, *Decisions*, ii, 4.

¹¹¹ Allardyce, *Jacobite Period*, i, 4-7.

¹¹² [William Hamilton], *Some Particular Matter of Fact relating to the Administration of Affairs in Scotland under the Duke of Lauderdale* (London, 1679), 1.

personal appearance at one of the courts within his division, he ratified and approved all the commissioners' previous actions, indicating an implicit right of review on his part.¹¹³ This might be expected given the semi-detached nature of Argyll's division, but similar elite influence was in evidence elsewhere. In the eastern division, as we have already seen, Findlater's pre-eminence was such that one of the commissioners, Arthur Forbes, implied in September 1697 that the remnant commissioners felt unable to proceed with any business in his absence.¹¹⁴ Breadalbane was generally reckoned to dominate the activities of the southern division's courts, while in the north, Culloden and Ludovick Grant of Grant were probably the most influential characters.¹¹⁵ This carried very real dangers. In Argyll's jurisdiction, the earl himself took 100% of all fines imposed, introducing a surely irresistible temptation to treat the justiciary courts as cash-cows.¹¹⁶ Commissioners elsewhere lacked so striking a conflict of interest, since revenues were mandated for meeting general court expenses, but this did nothing to tackle a wider problem; Hill's observations in 1697 about excessive harshness in Lochaber made the point that exorbitant orders for restitution were often made by judges who were themselves the injured party.¹¹⁷ A particular complaint in this regard was that commissioners were using their position to redress losses suffered during the Jacobite rising.¹¹⁸ William II had passed an indemnity for rebellion-era crimes in 1691,¹¹⁹ but there

¹¹³ NRS, SC54/17/1/5, 8.

¹¹⁴ Grant, *Seafield Correspondence*, 217.

¹¹⁵ Murray, *Chronicles*, i, 446; A. Macpherson, 'Gleanings from the Charter Chest at Cluny Castle', *Transactions of the Gaelic Society of Inverness, volume XX, 1894-96* (Inverness, 1897), 202-247, at 242-243; D.C. MacTavish (ed.), *Inveraray Papers* (Oban, 1939), 19.

¹¹⁶ NRS, SC54/17/1/5, 2.

¹¹⁷ Fraser, *Cromartie*, i, 124-125.

¹¹⁸ Hopkins, *Glencoe*, 492.

was some uncertainty about its extent; the southern commission reportedly suffered a split on the issue in 1694, forcing them to write to William in the Dutch Republic for guidance.¹²⁰ This uncertainty allowed some questionable prosecutions to proceed. In 1695, Lord Forbes attempted to prosecute John Lumsden of Achindore – ‘a knave from his Cradle’ – for thefts committed on Forbes’ tenants during the Jacobite unrest.¹²¹ In the same year, Grant masterminded an attempt simultaneously to indict nearly 1,000 men, most of them Camerons from Lochaber and the western seaboard (Hill claimed that ‘most of all’ the significant men in this region had been cited) for various thefts, dating from 1689, committed upon him and his tenants in Urquhart. The pursuers sought damages amounting to an impossibly large 33,000 merks, but their action stalled because the accused individuals claimed that they lived within Argyll’s jurisdiction and therefore could not be tried by the northern commissioners.¹²² The northern division also received a citation from the heritors of Dalshangie, claiming damages of nearly £3,000 for raids conducted in 1689 by the MacDonalds of Glencoe and Stewarts of Appin.¹²³ The commissioners readily endorsed the heritors’ claims, but the privy council had had enough, and in December ordered all cases of this kind to be dropped.¹²⁴ The impact of this clarification is questionable, however, since

¹¹⁹ *RPCS*, xvi, 536-537.

¹²⁰ *HMC, Roxburghe*, 143-144.

¹²¹ *NRS*, GD52/77.

¹²² Macpherson, ‘Gleanings’, at 242-243; MacTavish, *Inveraray Papers*, 17-21.

¹²³ D. Wimberley, ‘Selections from the Family Papers of the Mackays of Bighouse’, *Transactions of the Gaelic Society of Inverness*, volume XXI, 1896-97 (Inverness, 1899), 120-170, at 134-137.

¹²⁴ *NRS*, PC1/50, 288-289.

Alasdair mor MacDonald's controversial prosecution, fully seven years later, included charges for pre-indemnity thefts.¹²⁵

Commissioners might also use their position to protect allies or dependents. Argyll, for example, moved to lighten the burdens borne by the MacGregors, conventional semi-dependents of the Campbells, by making them take bonds covering only their direct descendants, rather than 'all thos descended of [the] granters famely'.¹²⁶ The MacGregors also allegedly benefitted from the patronage of another prominent Campbell, Breadalbane, who in 1695 was accused of manipulating the proceedings of the southern division in order to protect the soon-to-be-infamous Rob Roy from prosecution.¹²⁷ Culloden used his appointment for rather different purposes in 1699, when he persuaded the northern commissioners not to execute a horse thief named Donald McKay. Since McKay was an associate of Lochiel's, Culloden explicitly viewed his actions as a gesture of personal friendship towards the Cameron chief.¹²⁸ If the commission could be fashioned into a shield for allies, it might also serve as a weapon against enemies. This was certainly the view taken by Atholl in a virulent attack on the Highland commission in 1698:

The Justice Court [...] is now a toole made use off to the prejudice of our famillie, for those north countrie districts is govern'd by persons who is our enemies, being very ill

¹²⁵ NRS, PC1/52, 323-326.

¹²⁶ NRS, SC54/17/1/5, 9.

¹²⁷ Murray, *Chronicles*, i, addenda, xliii.

¹²⁸ Warrand, *More Culloden Papers*, i, 263-264.

chose [...] espetially in the north, for it is all our enemies there has it in their handes.¹²⁹

Self-serving though it was, Atholl's complaint fed into what was undoubtedly a key structural weakness of the Highland commission, flowing directly from its rejection of the Albany model of engagement with the 'middling sort'. By employing proportionally fewer Highlanders as commissioners than had Albany, and by allowing for a larger elite presence amongst this cohort, the government ensured that the influence of regional grandees would be enormous. This, in turn, meant that the commission all too readily became simply another tool for pursuing private interests under the guise of public justice, a perspective that accords with the familiar argument that the 'Highland problem' in the seventeenth century stemmed as much from the failings of government policy, and the disruptive activities of government agents, as from native unruliness.¹³⁰

By the time of Anne's accession, these various shortcomings had clearly damaged the commission, but it was the Queensberry plot of 1703 which would effectively kill it off. This bogus Jacobite conspiracy, 'revealed' by the roguish Simon Fraser, 11th lord Lovat and seized upon for political purposes by the secretary of state, James Douglas, 2nd duke of Queensberry, alleged that a major Jacobite attempt was imminent, during which the Highlands would rise for 'James VIII'.¹³¹ The government's response was two-fold. Firstly, it resurrected the 'general band', a policy, introduced by James VI in 1587, requiring named landlords and chiefs to travel to Edinburgh and give bonds of caution for the peaceable behaviour of their

¹²⁹ Murray, *Chronicles*, i, 443-446. Lochiel, writing in 1695, similarly claimed that the commission was dominated by 'my mortall and most malicious enimies'. MacTavish, *Inveraray Papers*, 20.

¹³⁰ This point is made throughout Hopkins, *Glencoe*, and Macinnes, *Clanship*.

¹³¹ B. Lenman, *The Jacobite Risings in Britain 1689-1746* (Dalkeith, 2004), 74.

followers.¹³² There were some recent precedents for resorting to this Jacobean statute. Charles II had relied on it heavily.¹³³ It was also used by William II as an emergency response to the Assassination Plot and projected Franco-Jacobite invasion of 1696, although on that occasion it was undermined both by opposition from Argyll (who tried to sabotage it during its passage through the privy council by suggesting that some Lowlanders as well as Highlanders should be required to give bonds) and by a derisory response-rate.¹³⁴ At Anne's prompting, the council re-introduced the general band in January 1704, using 1696 as its model. Twenty-two Highland chiefs and noblemen were ordered to give their sureties in Edinburgh no later than 17 February, and a further eleven were cited for 29 February. The response seems to have been rather better than in 1696, possibly because of Campbell support; the House of Argyll stood surety for at least eight of the cited individuals.¹³⁵

The government's second response to the Queensberry plot was military retrenchment. Indeed, this was on the agenda even before the plot broke; early in 1703, lord Murray, now known as earl of Tullibardine, suggested the creation of a consolidated Highland regiment, with manpower drawn from some of the major clans and envisaged as being up to five times as large as the existing independent companies combined. This would allow the companies – filled, so Tullibardine insisted, with ‘all the most notorious rogues and

¹³² M. Lynch, ‘James VI and the ‘Highland Problem’ in Julian Goodare and Michael Lynch (eds.), *The Reign of James VI* (East Linton, 2000), 208-227.

¹³³ Kennedy, *Governing Gaeldom*, 187-193.

¹³⁴ NRS, PC1/50, 425, 457-458, 491, 530-531, 560-561 and at 587-588; McCormick, *Carstares*, 278-282.

¹³⁵ NRS, Privy Council Acta, 1703-1707, PC1/53, 107-109, 110-112, 119-120, 160, 180-181, 183, 197, 212-214 and at 256-258.

theives in the Hilands’ – to be redeployed more fruitfully fighting Louis XIV in Flanders.¹³⁶ The Tullibardine plan was a transparent effort to boost the power of the Murray family, principally at the expense of the Campbells, and it ultimately bore no fruit. Instead, Anne’s government opted in May 1704 to create a third independent company under the command of Major Duncan Mackenzie, to be stationed at Inverness. Although accompanied by a decree revising the size of the independent companies down to fifty men each, this new muster still increased the military establishment in the Highlands by nearly half.¹³⁷ At the same time, Fort William remained, despite an effort by the duke of Gordon to have it removed in 1704-1705, claiming prior ownership of the land on which it was constructed. The government’s handling of Gordon’s overtures, which consisted of offering to buy the land at well above market rate, revealed the sincerity of its belief that the stronghold remained ‘a necessary fort for the security of the kingdome, and the quyet of those pairts’.¹³⁸ Together, the resurrection of the general band and the intensification of military control seem to have simply swept the Highland commission from official consciousness, and nobody suggested its renewal once the formal end-date of 1705 had been reached. Instead it was armed occupation, through Fort William and the three Highland companies, which held the field. The Williamite regime’s preference for repressive, militarised control was thus confirmed and indeed expanded under

¹³⁶ Fraser, *Cromartie*, i, 184-186

¹³⁷ NRS, PC1/53, 237-238; J. Macpherson (ed.), *Original Papers containing the Secret History of Great Britain from the Restoration to the Accession of the House of Hannover*, 2 vols (London, 1775), ii, 7.

¹³⁸ NRS, PC1/53, 364-365

Anne – thereby setting a precedent which would be followed by post-union governments for much of the rest of the eighteenth century.¹³⁹

Conclusion

Under Charles II and James VII, Highland policy had followed an essentially ‘collaborative’ model, albeit with some authoritarian flourishes, and the original Highland commission had encapsulated this posture more fully than any other initiative. It might have been thought, therefore, that William II’s revival of the commission in 1694 signalled strategic continuity with the pre-Revolution approach. Yet this would prove not to be the case. Instead of appointing local members of the gentry to a largely civic judicial commission, William II offered a heavily militarised structure dominated by elite and outside personnel. The result was predictable; elite influence allowed William’s commission to be rather more active over a wider geographical area than Albany’s, but only in such a way as to attract extensive criticism for heavy-handedness and sharp practice, as well as undue subservience to private interests. Ultimately these weaknesses proved fatal, leading Anne’s government to let it die quietly in favour of still greater reliance on armed repression via the independent companies. Thus, although the ‘Highland problem’ was after 1689 essentially the same as it had been before – that is, concerned with banditry and cattle-theft, albeit with the additional threat of Jacobitism – it elicited from the authorities a quite different response which shunted Highland governance away from ‘collaborative’ approaches and towards the ‘imperialist’ end of the spectrum. This shift, it should be emphasised, did not mean more robust or effective government, and indeed William’s policy was arguably more destabilising

¹³⁹ A. Mackillop, *‘More Fruitful than the Soil’: Army, Empire and the Scottish Highlands 1715-1815* (East Linton, 2000), 19-20.

than anything else. Nor did a newly 'imperialist' approach imply the absence of local agency; we have seen the enthusiasm with which Argyll, Breadalbane, Tullibardine and others embraced and attempted to shape the state's intervention as a mechanism of personal advancement. William's Highland policy, in other words, was rooted in the theoretical supremacy of public authority in the locality, but not in any meaningful growth of state power.

All of this can be fed into wider debate about the Williamite regime in Scotland. The conventional picture of a disinterested but nonetheless heavy-handed administration which became increasingly unpopular has been challenged by more recent suggestions that William's government was genuinely engaged with Scottish affairs. Likewise, the received picture of a nation governed by a venal and unrestrained aristocracy looks shaky in the face of more careful consideration of day-to-day administration. Yet the evidence of Highland policy suggests historians will not be able to push such revisionism too far. The strategic and militaristic underpinnings of William's approach to the Highlands, not to mention the commission's domination by the regional nobility, seem to reinforce much of the conventional critique. There may well have been sound reasons for this approach – not least the Highlands' recent history of Jacobitism and the geopolitical challenges bound up in the Nine Years War (1688-1697) – but that does not alter the basic fact that, on the ground, Highlanders faced under William a more domineering policy matrix than they had under James VII or Charles II.

Highland developments also have potential implications for historians' understanding of peripheral control more generally. Partly this is because they offer a rare opportunity for direct comparison between a 'collaborative' policy and a near-contemporary 'imperialist' alternative sharing the same overarching structure; on balance it seems clear that the 'collaborative' incarnation of the 1680s enjoyed rather greater success than its 'imperialist'

successor of the 1690s, which might explain why many of the more durable projects in early-modern state formation tended to be those using the 'collaborative' approach. Perhaps more importantly, the transition from 'collaborative' to 'imperialist' was rapid, facilitated by a changed outlook on the government's part, since William's regime was inherently more aloof, more authoritarian and, thanks to the Jacobite rising, less trustful of its Highland subjects. But the change was not overt, since it utilised few truly new or innovative strategies, instead simply tweaking the existing structures of Highland government to better reflect the new ideological bent. All of this reflects the malleable nature of the early-modern state, and shows that its approach to outlying regions was neither fixed nor inevitable. Historians must therefore be alert to subtle and sometimes sudden alterations in the dialogue between centre and periphery if they are fully to understand their relationship in the early-modern period.